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U.S. Citizenship
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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: SEP 25 2007

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IN RE:

Petitioner:

Beneficiary:

[REDACTED]

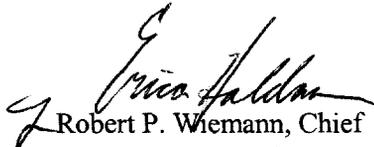
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the immigrant visa petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of Florida that is engaged in the commercialization and distribution of office products. The petitioner represents itself as a subsidiary of the beneficiary's foreign employer, and seeks to employ the beneficiary as its general manager.

The director denied the petition concluding that the petitioner had not established that the beneficiary had been or would be employed by the foreign or United States entities in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner challenges United States Citizenship and Immigration Services' (USCIS) finding, contending that the record establishes that the "primary activities" of the beneficiary would be managerial in nature. Counsel claims that in the alternative, the beneficiary should be considered a function manager, as he is in charge of the United States company's expansion plans and "is the organization's top manager." Counsel submits a statement in support of the appeal.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement, which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The first issue in this proceeding is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) Directs the management of the organization or a major component or function of the organization;
- (ii) Establishes the goals and policies of the organization, component, or function;
- (iii) Exercises wide latitude in discretionary decision-making; and
- (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner filed the immigrant visa petition on July 28, 2006 noting that the beneficiary would occupy the position of general manager of the five-person United States company. In an attached undated letter, the petitioner noted that USCIS had twice approved the beneficiary as an L-1A nonimmigrant intracompany transferee, and explained that the beneficiary's employment "has not materially changed since his initial entry." With respect to the beneficiary's proposed employment, the petitioner stated that "as an executive of our U.S. [s]ubsidiary [the beneficiary] occupies the highest managerial position" and would be responsible for

"planning, organizing, managing, coordinating, supervising, controlling and overseeing strategic guidance and leadership over all operations of our U.S. [s]ubsidiary." The petitioner outlined the following "general [job] duties" related to the beneficiary's proposed employment:

1. Planning, organizing, managing, supervising and developing all company operations of our U.S. subsidiary, including its plans and strategies. Forecast performance and engage in long-range planning and identifying business opportunities. He has complete responsibility over the establishment, direction and coordination of the marketing and sales of the company (30%)
2. Direct the execution and establishment to [sic] the company's strategic goals. Direct overall sales operations, coordinate activities and supervise personnel, determine the merchandise and services the company sell[s] or offer[s], buys or cont[r]acts. Establish direct negotiations with providers and approve purchase orders, contract terms, prices and payment conditions (30%)
3. He is responsible for organizing and supervising the formulation of administrative policies and procedures to be implemented by managerial staff of the company (10%)
4. Review financial statement and marketing plans, as well as results and makes decisions she [sic] may deem appropriate. Ensure implementation of cost reductions plans elaborated by staff of the company. Review accounting statements and make pertinent sales and marketing decisions (20%)
5. Selecting, hiring, training and firing managers and supervisors, supervising and control the job performance of staff and attend employees meeting. Follow up the personnel's evaluations according to the company's policies (10%)

[The beneficiary] will continue using his independent judgement [sic] and authority in identifying and cultivating new sources of business, and will establish and develop relationships with corporate clients, county authorities and strategic partners, etc.

On an attached statement of the petitioner's personnel and corresponding job duties, the beneficiary was identified as performing the following additional job duties: representing the company to clients, institutions and other organizations; develop and control the execution of the company's business plan; oversee the performance of company's procedures and policies; review the petitioner's position with respect to market conditions; and "[a]ny other function related to the management of the company." With the initial filing, the petitioner also submitted an organizational chart of the United States company, depicting the beneficiary as its general manager and as overseeing the company's commercial manager, secretary, two salespersons, and outside accountant.

On December 27, 2006, the director issued a request for evidence notifying the petitioner that the "broad, undefined language" and paraphrases of statutory language used in the initial job description were not sufficient to establish the beneficiary's proposed employment in a primarily managerial or executive capacity. The director further noted the petitioner's failure to define the beneficiary's specific job duties or to demonstrate that the company's reasonable needs "warrant or support a managerial or executive level position." The director directed the petitioner "to submit a detailed, comprehensive description of the beneficiary's . . . proposed position in the United States," which clearly identifies his specific day-to-day job duties and delineates the amount of time the beneficiary would devote to performing each task. The director

also requested additional evidence with respect to the job duties, position requirements and qualifications of the beneficiary's subordinates, including an outline of their weekly work schedules.

Counsel for the petitioner responded in a letter dated February 1, 2007, in which he outlined the statutory definition of "managerial capacity" and noted that the statute did not intend to limit managers to persons who supervise a large number of employees or a large organization. Counsel claimed that the beneficiary's employment in the United States is consistent with the definition of "managerial capacity" as he supervises two levels of employees, one of which is employed as a professional.

With respect to the beneficiary's proposed employment, counsel submitted a statement of the "functions" related to the position of general manager. The AAO notes that while the twelve-page statement broadly addresses "functions," as well as five "objectives" of the beneficiary, it is largely comprised of generalized sales objectives, which do not appear to be specific to the petitioner's business, as well as a description of the role of the commercial manager. Additionally, the named objectives and functions are centered on the petitioner's business expansion and responsibilities as the representative and operator of a "Pan & Plus" facility in a Florida Walgreens store. In the support letter initially submitted with the Form I-140, the petitioner identified Pan & Plus as "a new European bread concept company," and noted its "future plans" to obtain representation of the company. The evidence submitted with the initial filing did not address or expound on the petitioner's anticipated business relationship with Pan & Plus or the beneficiary's role with respect to the bread company.

On the statement submitted in response to the director's request for evidence, the beneficiary's five objectives were identified as: (1) increase the company's sales; (2) optimize the sales activities; (3) obtain "greater efficiency" from the company's personnel and effectively utilize its material resources; (4) correct problems; and (5) motivate personnel. Throughout its response, the petitioner also noted the following "functions": (1.A) forecast operations, maintain long-range plans and identify business opportunities, 15%; (1.B) assume responsibility for the establishment, direction and "coordination of the commercialization and the sales activities of the company," 15%; (2) manage, implement, and establish strategic goals; (2.A) manage sales operations, "coordinate the activities and supervise the personnel," 15%; (2.B) determine the merchandise sold or bought by the petitioner and the services offered or contracted for by the petitioning entity, 9%; (2.C) negotiate directly with suppliers and approve purchase orders, contract terms, and prices, and payment conditions, 6%; (3) organize and supervise "the formulation of administrative policies and procedures," 10%; (4) review financial statements and commercial plans, and make "appropriate" decisions; (4.A) develop a cost reduction plan, 7%; (4.B) review accounting declarations and make decisions pertaining to sales and commercialization, 13%; (5) select, contract with, train, and dismiss personnel; (5.A) "[s]upervise and control the work performance of the personnel and attend employees' meetings, 7%; and (5.B) evaluate personnel according to company policy, 3%.

Counsel for the petitioner also provided job descriptions for the beneficiary's subordinates, which largely focused on tasks to be performed with respect to the Pan & Plus business.

In a decision dated February 23, 2007, the director concluded that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director restated the descriptions offered for the beneficiary's position, noting that the job description offered in response to the director's request for evidence "primarily reiterates the duties of the initial job description." The director stated "[T]he remainder of the letter addresses current projects being undertaken by

the petitioner, such as implementing the Pan & Plus business within a small number of Walgreens in Florida, the general tasks involved in such projects, and different strategies which may be employed by companies in general, the letter does not clearly define the beneficiary's specific duties within the general [job responsibilities listed by the petitioner]." The director further concluded that with respect to the beneficiary's subordinate personnel, it did not appear that the beneficiary would manage professional or managerial employees, noting that the position of commercial manager did not seem to require a baccalaureate degree. Lastly, the director concluded that the "overall purpose and functions of the organization [do] not demonstrate that the reasonable needs of the company, at this stage of its operations, supports or warrants an executive or managerial position." Consequently, the director denied the petition.

On March 26, 2007, counsel for the petitioner filed this timely appeal. In an attached statement, counsel contends that the beneficiary qualifies for classification as a manager. In support of the beneficiary's purported managerial role, counsel emphasizes that the statutory definition of "managerial capacity" requires an analysis of the beneficiary's "primary activities," and does not preclude the performance of non-managerial job duties. Counsel states that the statutory definitions of "managerial capacity" and "executive capacity" "are not intended to exclude from the duties of a manager or executive activities that are not strictly managerial, but are common to those positions, such as customer and public relations, preparing reports, and contracting." Counsel states that under the standard applied by USCIS in its review of the beneficiary's proposed employment, "no Manager, no matter how big the company is, would qualify as having [m]anagerial capacity." Counsel further challenges the director's conclusion that the reasonable needs of the petitioning organization did not warrant the employment of a manager or executive, stating that "the statute was not intended to limit managers or executives to persons who supervise a large number of persons or a large enterprise."

Counsel also disputes the director's finding that the beneficiary would not supervise managerial or professional employees. Counsel claims that the director overlooked the work experience of the company's commercial manager, which demonstrates that he has five years of experience working in the business field. Counsel submits an evaluation performed by Global Education Group, a foreign credential evaluation firm, certifying that the commercial manager's experience and degree are equivalent to a United States bachelor's degree in business administration.

Additionally, counsel contends that the beneficiary qualifies as a function manager "because he is in charge of the expansion plans i.e. negotiating deals with Walgreens to implement Pan & Plus businesses and he is the organization's top manager." Counsel cites earlier cases in which the AAO determined the beneficiary was employed as a function manager, noting that the AAO concluded that a company's small size "[did] not justify a denial where the beneficiary is to be hired as the organization's top manager." Counsel contends that the present matter is consistent with these earlier decisions, one of which specifically noted the similar responsibilities of controlling financial matters, "establishing goals and policies, signing check and contracts, and administering the sales, marketing, and technical support departments." Counsel notes that the beneficiary holds the additional responsibility of negotiating deals and overseeing the expansion of the Pan & Plus businesses, tasks that counsel contends the AAO previously considered to be relevant to those of a function manager.

Upon review, the petitioner has not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5).

As correctly noted by the director, the initial description offered for the position of general manager is not sufficient to establish the beneficiary's proposed employment in a primarily managerial or executive capacity. The petitioner provided only a brief account of the beneficiary's role in the United States that was not specific to the beneficiary's day-to-day managerial or executive job duties as the general manager of the distribution firm.

The regulations require that the petitioner submit with the Form I-140 a letter clearly describing the managerial or executive job duties to be performed by the beneficiary. *See id.* The petitioner's broad claims of the beneficiary's responsibilities of "[p]lanning, organizing, managing, supervising and developing" the company's operations and policies, directing the company's goals, supervising, hiring and firing personnel, determining products and services offered by the petitioner, reviewing financial statements, and making marketing decisions do not satisfy the requirement of specificity provided for in the above-cited regulation. For example, the petitioner did not identify what "operations" or "activities" the beneficiary would manage or "coordinate," or the "long-range" plans and "business opportunities" determined by the beneficiary. Nor did the petitioner expound on its generalized claim that the beneficiary would "determine the merchandise and services the company [would] sell or offer, buys or cont[r]acts," thus suggesting that the noted job responsibilities are not specific to the beneficiary's role in the petitioner's business, as the petitioner was initially identified as offering distribution, importing and exporting services. Moreover, the petitioner acknowledges in its letter the "general" nature of the outlined job duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Id.* at 1108.

The petitioner's response to the director's request for evidence failed to clarify the beneficiary's proposed employment as a manager or executive. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

As mentioned above, the petitioner's response to the director's request for evidence focused predominantly on its role as the representative of the Pan & Plus company in Walgreens stores and the employees' corresponding job duties. The AAO notes that in its initial letter, other than to mention its "future plans" to represent the Pan & Plus company, the petitioner did not identify the bakery in connection with the beneficiary's proposed employment. Nor did the petitioner state at the time of filing that the beneficiary would possess managerial or executive job responsibilities with respect to the Pan & Plus facility. Yet, in response to the director's request for evidence, the petitioner appears to only vaguely address the beneficiary's

job responsibilities with respect to the establishment of the Pan & Plus facility, and does not specifically identify how the beneficiary would qualify as a manager or executive of the distribution, purchasing, import and export company, which was originally identified as the petitioner's business purpose on the Form I-140 and in its business plan. Again, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Nonetheless, the "objectives" and "functions" provided by the petitioner with counsel's February 1, 2007 letter are equally as vague as the initially offered job responsibilities. The beneficiary's plans to increase sales, optimize the company's resources, and correct problems do not provide clarification as to why the beneficiary would be considered a manager or executive of the petitioning entity. Similarly, while the petitioner provided an additional outline of how the beneficiary would allocate his time, the named job responsibilities are too broad to determine what specific managerial or executive job duties the beneficiary would perform as the general manager and whether he would occupy a primarily managerial or executive role in the petitioning entity. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. As noted by the director, the petitioner's response to his request for evidence, while lengthy, essentially reiterates the broad statements initially made by the petitioner. The petitioner's failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Moreover, if considering the petitioner's operations as a distributor and licensed importer and exporter of office products, the beneficiary's employment as a manager or executive remains questionable. The petitioner represents the employment of the beneficiary, a commercial manager, a secretary, and two salespersons, as well the contracted services of an outside accountant. The AAO notes that none of the descriptions offered for the subordinate positions account for the performance of the day-to-day operational and administrative tasks specifically related to the company's distribution, import or export functions. In fact, in its response to the director's request for evidence, the "sample" weekly schedules of the salespersons consist of tasks specific to their work at the Pan & Plus facility in Walgreens, while the commercial manager's responsibilities include visiting clients and supervising deliveries. It is not clear from the "functions" listed for the commercial manager whether he would perform any tasks related to the petitioner's distribution, import or export functions. As a result, the AAO cannot conclude whether the beneficiary would be relieved from performing non-qualifying daily administrative and operational functions of the business. The AAO notes that an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The above analysis of the petitioner's operations as a distributor and licensed importer and exporter of office products corroborates the finding that the petitioner's reasonable needs would not be met through the employment of the beneficiary and the company's four-person subordinate staff. Again, the inconsistent references to the type of business operated by the petitioner, in addition to the vague statements of the tasks to be performed by both the beneficiary and subordinates, preclude a finding that the reasonable needs of the company would be met while employing the beneficiary in a primarily managerial or executive capacity.

The AAO notes that while counsel instructed that a company's size is not determinative of whether the beneficiary would occupy a primarily managerial or executive position, he did not provide on appeal evidence that the petitioner's reasonable needs would be met through the employment of its five person staff. Additionally, counsel did not submit an additional comprehensive description of the "primary" managerial or executive job duties of the beneficiary, despite the director's note in his decision of insufficient detail. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel's additional claim that the beneficiary would be employed as a function manager is not persuasive. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function.

Here, counsel's representation of the beneficiary as a function manager is based on the beneficiary's position as the petitioner's "top manager" and his responsibility of negotiating deals for Pan & Plus businesses. The AAO again notes that the beneficiary's claimed managerial responsibilities in the Pan & Plus business were not alleged in the petitioner's initial filing. See *Matter of Katigbak*, 14 I&N Dec. at 49. Regardless, the brief and unsupported claim that the beneficiary would qualify as a function manager because of his position in the petitioner's organizational hierarchy and his role in negotiating business deals does not satisfy the requirement of specifically identifying the beneficiary's daily job duties with respect to the essential function to be managed. Again, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 534. The record as presently constituted does not establish the beneficiary's employment as a function manager.

Notwithstanding the above discussion, the AAO notes that the director incorrectly concluded that the beneficiary would not be supervising a managerial employee. As depicted on the organizational chart, the beneficiary would supervise the company's commercial manager, who would in turn manage the secretary and two salespersons. Nonetheless, the supervision and control of other supervisory, managerial or professional employees is only one of the four requirements listed in the statutory definition of "managerial capacity." The petitioner has not demonstrated that the beneficiary's proposed employment would satisfy the criteria listed in the statutory definitions of "managerial capacity" or "executive capacity."

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The second issue in this proceeding is whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

In the support letter submitted with the initial filing, the petitioner identified the beneficiary as having occupied the position of sales manager in the foreign entity, during which he performed "executive duties" and directed the sales department. With respect to the beneficiary's former employment, the petitioner stated:

[The beneficiary] was responsible for coordinating, planning, organizing, supervising, controlling, developing and directing our Sales Department operations. He exercised wide latitude in discretionary day[-]to[-]day decision making. He also formulated and executed promotion policies pertaining to the services, planning activities and standards applied in support services which were consistent with requirements for all operations. [The beneficiary] is very familiar with all our business and he possesses the necessary knowledge which can be gained only through extensive prior experience within our parent company that is valuable to the employers's [sic] competitiveness in the market. Thus, [the beneficiary] has demonstrated during his tenure with our Peruvian parent company the necessary knowledge and ability to run successfully the operations of our U.S. Subsidiary. In addition, he has given us strategic guidance, developed promotion plans and has created processes and procedures to be followed in the company.

The AAO notes that following the director's request for a detailed description of the beneficiary's employment in the foreign entity counsel for the petitioner submitted a list of "functions" performed by the beneficiary as the company's sales manager. As the list is already part of the record, it will not be repeated herein.

In his February 23, 2007 decision, the director concluded that the petitioner had not demonstrated that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity. The director restated the descriptions offered by the petitioner of the beneficiary's former overseas employment, and concluded that such tasks as visiting clients, providing technical assistance, carrying out sales campaigns, preparing sales reports, promoting the company's services, and "using marketing tools" related to the performance, rather than the management, of the foreign company's sales function. The director also noted that it was unclear whether several of the beneficiary's job responsibilities, such as "elaborate and supervise the fulfillment of the budgets of sales," were managerial or executive in nature, and indicated that the petitioner's response to his request for evidence failed to offer clarification. The director determined that "the description did not adequately demonstrate that the beneficiary spent a majority of his time performing managerial or executive level duties." Consequently, the director denied the petition.

On appeal, counsel for the petitioner fails to specifically address the beneficiary's employment in the foreign entity. Counsel only briefly mentions the beneficiary's responsibilities of "client visits," carrying out sales campaigns, and preparing sales reports, yet it does not appear that they are mentioned in the context of the beneficiary's foreign employment. Rather, counsel's statement on appeal seems to focus predominantly on the beneficiary's proposed employment in the United States entity. Counsel does not challenge the director's specific findings with respect to the beneficiary's performance of non-managerial or non-executive functions

in the foreign entity's sales department or the vague nature of his overseas employment. Moreover, counsel does not offer on appeal an additional description or clarification as to why the beneficiary should be deemed to have occupied a primarily managerial or executive capacity in the foreign company. The petitioner has not demonstrated that the director erred in concluding that the beneficiary was not employed in a primarily managerial or executive capacity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For this additional reason, the petition will be denied.

Counsel mentions throughout the instant proceeding that USCIS previously approved two L-1A nonimmigrant visa petitions filed by the petitioner on behalf of the beneficiary. It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. See §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. Cf. §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427.

In addition, unless a petition seeks extension of a "new office" petition, the regulations allow for the approval of an L-1 extension without any supporting evidence and CIS normally accords the petitions a less substantial review. See 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Because CIS spends less time reviewing L-1 petitions than Form I-140 immigrant petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003).

Moreover, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. See 8 C.F.R. § 103.8(d). The prior nonimmigrant approvals do not preclude CIS from denying an extension petition. See e.g. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 petitions after approving prior nonimmigrant I-129 L-1 petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the

previous nonimmigrant approvals by denying the present immigrant petition. The director is instructed to review the previous nonimmigrant approval for revocation pursuant to 8 C.F.R. § 214.2(l)(9)(iii).

Finally, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.